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Paper No. 13
EJS

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dada Corporation

Serial No. 75/669,947

Dada Corporation, pro se.[1]

Tami Cohen Belouin, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney)

Before Seeherman, Walters and Bottorff, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Dada Corporation has appealed from the final refusal of the Trademark Examining Attorney to register SURE-FIT, in the stylized form shown below, for "head bands, clothing, namely, hats, caps (e.g., baseball caps) and headwear."[2]

[1] Kelly Carroll has been appointed domestic representative for applicant, a Korean corporation, but no attorney was ever appointed.

[2] Application Serial No. 75/669,947, filed March 30, 1999, and asserting a bona fide intent to use the mark in commerce. It is noted that certain of applicant's papers identify applicant as

It is noted that, in the final Office action, the Examining Attorney advised applicant that parentheses are not allowed in identifications, but she did not specifically make final a requirement for an acceptable identification. Further, in her brief she has set forth the identification as it appears in our opinion. Accordingly, we deem her to have waived any objection that she may have had to the identification. Thus, the only issue on appeal is the Examining Attorney's refusal to register applicant's mark, pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that the mark so resembles the mark SUREFIT, previously registered for football helmets and bicycle helmets[3] that, if used on

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Boo Yi Park (e.g., the response to the first Office action) and as Boo Yi Park, C.E.O. of Dada Corp. (e.g., the notice of appeal). Because no assignment of the application to Boo Yi Park has been recorded, and because the last paper filed in the application, a change in domestic representative, identified applicant as Dada Corp, with Boo Yi Park listed as the CEO, we deem Dada Corporation to be the applicant.

[3] Registration No. 1,913,111, issued August 22, 1995.

applicant's identified goods, it would be likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

We affirm the refusal of registration.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The marks at issue herein, SURE-FIT and SUREFIT, are virtually identical. They are identical in pronunciation and connotation, and are nearly so in appearance. The scope of protection to be accorded the cited mark, which is registered as a typed drawing, would extend to the minimal stylization shown in applicant's mark. Further, the fact that applicant's mark is hyphenated and the registered mark is not does not serve to distinguish them visually; both marks would immediately be recognized as the words SURE FIT, whether they are telescoped as in the registered mark or hyphenated as in applicant's mark.

Applicant does not dispute the similarity of the marks, but argues that confusion is not likely because of the differences in the goods, and the fact that they are classified in different international classes.

With respect to the latter point, the Patent and Trademark Office's classification system follows that set up by the Nice Convention, and is essentially an administrative system. The mere fact that goods are classified in different classes does not mean that confusion is not likely to occur if the same or nearly identical marks are used on them. See **National Football League v. Jasper Alliance Corp.**, 16 USPQ2d 1212, 1216, n.5 (TTAB 1990). It is well established that the goods of the parties need not be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. **In re International Telephone & Telegraph Corp.**, 197 USPQ 910 (TTAB 1978).

In this case, the Examining Attorney has demonstrated the relationship between football and bicycle helmets, on the one hand, and headbands, hats, caps and headwear on the other, through third-party registrations and third-party catalogs and websites. The third-party registrations show that various entities have registered their marks both for goods of the type recited in applicant's application and for goods of the type recited in the registrant's registration. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993).

In addition, the catalog and website evidence shows that football and/or bicycle helmets are sold through the same channels of trade as are caps, baseball caps, and headwear.

Moreover, applicant's identified goods and the registrant's identified goods are items sold to and used by the public at large, rather than by sophisticated purchasers. People who engage in athletic activities, such as football playing or bicycle riding, and who therefore may purchase the registrant's helmets, may also play

baseball or simply wear a cap at other times. Certainly there may be an overlap in the purchasers for the goods.

Thus, although applicant characterizes the only similarity between its goods and the registrant's as that they are both headwear, the evidence shows that the relationship between the goods is far greater.

Applicant also points to the fact that registrant's mark for football and bicycle helmets was registered despite a prior registration for the same mark for "footwear fitting inserts sold to shoe stores and shoe repair stores, namely heel pads, insoles, taps, tongue pads, halter and pinch pads." The differences between these goods appear, on their face, to be greater than the differences between applicant's goods and those of the cited registrant's. Moreover, the channels of trade for the helmet and footwear inserts are different while, as previously indicated, they are the same for the applicant's goods and those of the cited registrant.

Applicant has also pointed to the coexistence of two registrations for SURE GRIP, one for "components for paint applicator rollers, paint brushes, paint applicator pads, and extension rods for paint applicators, namely, handles sold as part of the above goods", and the other for "pre-inked rubber stamps." Again, there are greater differences

between these goods and the goods of the applicant and the cited registrant. In any event, even if other marks for different goods co-exist on the register, our decision must rest on the evidence before us in this appeal.

Although we have no doubt that in certain cases identical marks can coexist without any likelihood of confusion if they are used on sufficiently different goods, in this case the Examining Attorney has demonstrated that a sufficient relationship between the goods exists to make confusion likely to occur if applicant were to use the mark SURE-FIT for the identified head bands, clothing, namely, hats, caps (e.g. baseball caps) and headwear.

Decision: The refusal of registration is affirmed.